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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,924	06/06/2000	Roger P. Jackson	00,063	9408

7590 07/19/2002

John C McMahon
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Kansas City, MO 64112

EXAMINER

DAVIS, DANIEL J

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 07/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/588,924

Applicant(s)

JACKSON, ROGER P.

Examiner

Daniel J Davis

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4 and 9-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Gournay et al. (US 6,193,719 B1), or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Gournay when considering all embodiments and the teachings from the specification.

Regarding claims 1 and 9, Gournay discloses a "closure for use in conjunction with a medical implant having an inward threaded surface". The closure body 5 has an outwardly threaded surface 5 that mates with an implant. The driving head 6 has a cross section perpendicular to the axis of rotation. The removal head 3,7 has a cross section perpendicular to the axis of rotation and different from the driving head 6. The head is designed to break off at a predetermined torque (Col. 1, lines 47-51).

Fig. 1² illustrates the removal head between the body and the driving head. Col. 4, lines 46-51 explains that the removal head can be external of the body. Or in the alternative, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the removal head external of the body.

Regarding the use of the implant to close a channel between two spaced arms, Figs. 12-13 illustrate a closure being used with an implant having arms.

Regarding claim 2, the driving head 6 is joined to the closure body by a breakaway region 4 (Fig. 1). The breakaway region 4 breaks away when a preselected force is applied to the driving head 6 (Col. 1, lines 47-51 and Col. 2, lines 34-35).

Regarding claim 4, the driving head 6 and the removal head 3,7 have different shapes, which prevent the installation tool from inadvertently gripping the removal head 6. Gournay teaches that the shape of either the driving head or the removal head may be of any shape (Col. 4, lines 46-51). This implies that the shape of the driving head and the cross section shapes may be different polyhedral shapes.

Regarding claim 12, Fig. 12 illustrates a polyhedral having driving and removal heads with different sized cross sections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cortel (US 5,154,719) in view of Gournay.

Regarding claim 5, Cortel discloses a system comprising an open headed implant having interiorly threaded 9 arms 6 in conjunction with a closure 10. The closure 10 has a cylindrical shaped body (Fig. 1) with a driving head 8 and a removal head 8 (the heads are one in the same). Cortel fails to disclose that the driving head 8 has a different cross section from the removal head 8. Cortel also fails to disclose a driving head that breaks away at a predetermined torque.

Gournay teaches a closure (Fig. 1) having a driving head 6 with a cross section different from that of the removal head 7,3. The driving head breaks away at a predetermined torque, (Col. 1, lines 46-51) which improves clamping torque precision (Col. 1, lines 52-60).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the closure 10 (Fig. 1) disclosed by Cortel by adding the breakaway driving head 6 as taught by Gournay to improve clamping torque precision.

Regarding claim 6, the driving head taught by Gournay has a driving head 6 that is connected to the closure body (Fig. 1) by a breakaway region 4. The driving head 6 breaks away at a predetermined torque (Col. 1, lines 46-51).

Regarding claim 7, the removal head 7,3 is centered between the closure body (Fig. 1) and driving head 6. An imaginary line can be drawn halfway between the breakaway region 4, and the bottom of the closure body/removal head 3,7. The upper half constitutes the removal head, and the lower half constitutes the body.

Regarding claim 8, Gournay teaches a driving head 6 having a cross section having a different polyhedral shape from that of the removal head. Cortel discloses a hexagonal cross section. Gournay teaches that the shape of either the driving head or the removal head may be of any shape (Col. 4, lines 46-51). This implies that the shape of the driving head and the cross section shapes may be different polyhedral shapes.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J Davis whose telephone number is (703) 305-1232. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

DJD
July 16, 2002


DAVID O. REIP
PRIMARY EXAMINER
7/17/02